

REMARKS

Prior to entry of this amendment, claims 1-24, 27-31, 33, 62-63 and 65-67 are currently pending and claims 36, 38-40, 42-43 and 46-60 are currently pending and withdrawn. Claims 21 and 22 have been cancelled without prejudice. New claims 68-109 have been added. Accordingly, upon entry of the present amendment, claims 1-20, 23-24, 27-31, 33, 62-63, and 65-94 will be pending and claims 36, 38-40, 42-43, 46-60 and 95-109 will remain pending and withdrawn.

Support for the amendments to the claims can be found throughout the specification and claims as originally filed. Claims 3 and 14 have been amended to correct obvious typographical errors. Support for the amendment to claim 67 can be found, for example, at pages 20-21, paragraph 87 of the specification as filed. Support for new claim 68 can be found, at least, for example, in original claim 67. Support for new claims 69 and 70 can be found, at least, for example, at page 83 of the specification as filed (compound ER-805940). New claims 71-94 track claims 1-20 and 67-70, respectively. Support for new claims 71-91 can be found, at least, for example, in claims 1-20 and 67, respectively, as originally filed, as well as page 38, paragraph 124 – page 40, paragraph 126 of the application as filed. Support for new claim 92 can be found in claim 67 as originally filed, as well as page 38, paragraph 124 – page 40, paragraph 126. Support for new claims 93 and 94 can be found, at least, for example, at page 83 of the specification as filed (compound ER-805940), as well as at page 38, paragraph 124 – page 40, paragraph 126. New claims 95-109 track claims 46-60, respectively.

The foregoing claim amendments have been made solely for the purpose of expediting prosecution of the present application and should in no way be construed as acquiescence to any of the Examiner's rejections in this or in any other Office Action issued in the present application. Applicants reserve the right to pursue the subject matter of the present claims prior to being amended herein in this application or in another related application.

Request for Rejoinder of Withdrawn Claims 46-60

Applicant respectfully requests rejoinder of withdrawn claims 46-60 and 95-109 at least for the following reasons.

In the Restriction Requirement dated February 23, 2007, claims 1-24, 27-31, 33, 62-63 and 65-66 were listed in Group IV (drawn to a pharmaceutical composition wherein X is oxygen, Y and Z are carbon). Applicant submits that proposed Group IV should have also

included dependent claims 46-60, which are also drawn to pharmaceutical compositions. Applicant notes that these claims were listed in Groups I and III, which are also drawn to pharmaceutical compositions. In the Response to Restriction Requirement dated April 23, 2007, Applicant elected Group IV, **and subsequently requested rejoinder of dependent claims 46-60 in an Amendment dated December 11, 2007.** It is Applicant's position that it is appropriate to rejoin claims 46-60 and 95-109 (wherein claims 95-109 track claims 46-60) with the currently pending claims, as these dependent claims are directed toward a pharmaceutical composition wherein X is oxygen Y and Z are carbon.

Accordingly, because claims 46-60, claims 95-109 and the currently pending claims are directed toward a single, inventive concept, and examining claims 46-60 and 95-109 would not present a search burden, Applicant respectfully requests that these claims be rejoined.

Double Patenting

Claims 1-24, 27-31, 33, 62-63 and 65-67 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-22, 40, 43, 66 and 81 of co-pending U.S. Application No. 10/507,067.

While in no way admitting that claims 1-24, 27-31, 33, 62-63 and 65-67 are obvious over claims 1-22, 40, 43, 66 and 81 of co-pending Application No. 10/507,067, Applicant submits herewith a Terminal Disclaimer in compliance with 37 C.F.R. 1.321(b) and (c). Applicant respectfully submits that this rejection has been obviated by the submission of the foregoing documents. Accordingly, Applicant respectfully requests withdrawal of the foregoing rejection.

CONCLUSION

In view of the above remarks, it is believed that this application is in condition for allowance. If a telephone conversation with Applicant's Attorney would expedite prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

Dated: May 7, 2009

Respectfully submitted,

Electronic signature: /Brian C. Trinque, Ph.D./

Brian C. Trinque, Ph.D.

Registration No. 56,593

LAHIVE & COCKFIELD, LLP

One Post Office Square

Boston, Massachusetts 02109-2127

(617) 227-7400

(617) 742-4214 (Fax)

Attorney/Agent For Applicant